

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DUSHUN ROBINSON,

Plaintiff,

v.

Case No: 8:21-cv-0308-KKM-CPT

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

ORDER

Dushun Robinson sued the Social Security Commissioner because the Commissioner refused to dispense disability benefits to Robinson while he was in prison. (Doc. 1; Doc. 31 at 2.) The Commissioner moves to dismiss, arguing that Robinson did not exhaust the administrative appeal process before filing suit, so this Court does not have jurisdiction over Robinson's claim. (Doc. 20.) By all appearances, Robinson agrees. He admits that he "neglected a step in procedure" and seeks to dismiss this action. (Doc. 26.)

The Magistrate Judge held a hearing on the motions. (Doc. 27.) The Magistrate Judge confirmed that Robinson intends to withdraw the suit and acknowledges that he must seek administrative remedies before filing in this Court. (Doc. 31 at 3; Doc. 30.) Accordingly, the Magistrate Judge recommended that the Court treat Robinson's filing as

a notice of voluntary dismissal under Rule 41, deny the Commissioner's motion to dismiss as moot, and close this case. The fourteen-day deadline for Robinson or the Commissioner to object to the Magistrate Judge's recommendation has passed (with an additional three days permitted for mailing). Neither party objected. Nevertheless, the Court reviews the Magistrate Judge's legal conclusions de novo. *See Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Ashworth v. Glades Cnty. Bd. of Cnty. Comm'rs*, 379 F. Supp. 3d 1244, 1246 (M.D. Fla. 2019) (Steele, J.).

After a complete review, the Court agrees with the Magistrate Judge that Robinson means to voluntarily dismiss. (Doc. 26; Doc. 30.) Because the Commissioner has not answered or filed a motion for summary judgment, such a dismissal is self-executing. *See Fed. R. Civ. P. 41(a)(1)(A)(i)*; *Matthews v. Gaither*, 902 F.2d 877, 880 (11th Cir. 1990) ("The dismissal [under Rule 41(a)(1)(A)(i)] is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is required."). Recognizing that Robinson dismissed this case, the Court denies the Commissioner's motion to dismiss as moot and directs the Clerk to close this case.

Accordingly, the following is **ORDERED**:

1. The Magistrate Judge's Report and Recommendation is **ADOPTED** and made a part of this Order for all purposes. (Doc. 31.)
2. The Commissioner's Motion to Dismiss is **DENIED as moot**. (Doc. 20.)

3. The Clerk is directed to **TERMINATE** any pending motions and deadlines and to **CLOSE** this case.

ORDERED in Tampa, Florida, on March 1, 2022.


Kathryn Kimball Mizelle
United States District Judge